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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/944,612 | 09/04/2001 | Ronald J. Boser | | 1322 |

7590 12/07/2001
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EXAMINER

HALE, GLORIA M

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| ART UNIT | PAPER NUMBER |
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3765

DATE MAILED: 12/07/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/944,612

Applicant(s)

Boser

Examiner

Gloria Hale

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.

- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.

- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on _____.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2

20) ☐ Other:

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DETAILED ACTION

1. The abstract of the disclosure is objected to because the trademark VELCRO is used throughout. The trade name should be removed from the abstract with the generic terminology in its place. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The use of the trademark VELCRO renders the claim indefinite in that it only identifies the source of material and not the material itself. The generic terminology should be used in the claim without the trade name VELCRO. Also, it is not clear as to whether a bra and removable underwire combination is being claimed or just an underwire with a fastener thereon. In regard to claim 1, line 1, it is not clear as to what the optional first and second uses actually refers to. It is not clear as to what "an operative location" encompasses. Since a bra is not being claimed in the preamble there is no antecedent basis for the breast cup or "said brassiere".

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Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fairbanks et al.

In regard to claim 1 Fairbanks et al discloses a bra (10) with bust pockets (cups 12,13) and fastener (21), and underwire (30) in a sheath (25) with matching fastener components (26) for selectively attaching the sheath encased underwire onto the bra to provide support to the wearer as desired. Fairbanks et al discloses the fastener as being complementary snaps and also that any other known fastener means can be substituted for the snaps. (See fairbanks et al., cols. 3-4 and figures 1-5).

The Examiner takes Official Notice that it is well known to substitute different types of fasteners for each other such as snaps for hook and loop fasteners and vice versa for greater ease in fastening and comfort to the wearer. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the bra of Fairbanks to use other fasteners such as adhesives or hook and loop fasteners for greater ease in fastening and unfastening the components together and for increased comfort to the wearer.

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Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited references disclose bras with removable underwire components.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria hale whose telephone number is (703) 308-1282.


Gloria Hale

Patent examiner- AU 3765

November 17, 2001